

## **PART V: Home Solicitation Sales**

### **§3538. Consumer's right to cancel**

A. Except as provided in subsection (E) of this section, in addition to any right otherwise to revoke an offer, the consumer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase.

B. Cancellation occurs when the consumer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

C. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

D. Notice of cancellation given by the consumer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the consumer not to be bound by the home solicitation sale.

E. The consumer may not cancel a home solicitation sale if the consumer requests the seller to provide goods or services without delay because of an emergency, and

(1) the seller in good faith makes a substantial beginning of performance of the contract before the consumer gives notice of cancellation, and

(2) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the consumer.

F. The term "home solicitation sale" as used in this Part, shall be defined as provided in R.S. 9:2711.1 and R.S. 9:3516(20).

### **§3538.1. [Blank]**

### **§3539. Form of agreement or offer; statement of consumer's right; compliance**

A. In a home solicitation sale, unless the consumer requests the seller to provide goods or services without delay in an emergency, the seller must present to the consumer and obtain his signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the consumer actually signs and contains a statement of the consumer's rights that complies with subsection B of this section.

B. The statement must

(1) appear under the conspicuous caption: "CONSUMER'S RIGHT TO CANCEL", and

(2) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to: (Insert name and

C. Until the seller has complied with this section the consumer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

D. Compliance with the notice requirements of the consumer's right to cancel a home solicitation sale of the Code of Federal Regulations Title 12, Part 226, commonly known as Regulation Z of the Consumer Credit Protection Act, 15 United States Code, Sections 1601 through 1681 or the Federal Trade Commission trade regulation providing for a cooling-off period for door-to-door sales of the Code of Federal Regulations, Title 16, Part 429 shall constitute compliance with this Section.

#### **§3540. Restoration of down payment; retention of cancellation fee**

A. Except as provided in this section, within ten days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the consumer any payments made by the consumer and any note or other evidence of indebtedness.

B. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

C. The seller may retain as a cancellation fee five percent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the consumer avoids the sale on any ground independent of his right to cancel provided by the provisions on the consumer's right to cancel (R.S. 9:3538) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

D. Until the seller has complied with the obligations imposed by this section the consumer may retain possession of goods delivered to him by the seller and has a privilege on the goods in his possession or control for any recovery to which he is entitled.

#### **§3541. Duty of consumer; no compensation for services prior to cancellation**

A. Except as provided by the provisions on retention of goods by the consumer (R.S. 9:3540(D)), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the consumer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the consumer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

B. The consumer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

C. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this part.

### **§3541.1. Consumer's right to cancel mail and check solicitation sales**

A.(1) In addition to any right otherwise to revoke an offer, a consumer shall have the right to cancel a mail and check solicitation sale, except when the sale is made to and accepted by a customer who has an existing loan, revolving account, or other line of credit with the party making and check solicitation sale.

(2) For purposes of this Section, a "mail and check solicitation sale" means a consumer credit sale of a thing or service, a consumer credit transaction, a revolving loan account, or a credit card, if such sale, transaction, loan, or the use of such credit card is contracted:

(a) Pursuant to a solicitation received by the consumer through the mail.

(b) Through the cashing of a check by the consumer that was sent to him with the solicitation.

B. The consumer has the right to cancel such mail and check solicitation sale for at least sixty days and receive a refund for the return of unused and undamaged goods or cancellations of unused services.

C.(1) Cancellation occurs when the consumer gives notice of cancellation to the person making such solicitation.

(2)(a) Notice of cancellation given by the consumer need not take a particular form and is sufficient if it indicates by any form of expression the intention of the consumer not to be bound by the check and mail solicitation sale.

(b) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

D. The cancellation of the mail and check solicitation sale shall occur even if the consumer has cashed the check or utilized the credit, loan account, or credit card.

E. In addition such a check shall contain the following language as a conspicuous caption; "WARNING: THE CASHING OF THIS CHECK WILL ENROLL YOU IN A PROGRAM OR A LOAN, OR WILL CAUSE YOU TO BE BOUND TO REPAY THE LOAN OR PURCHASE GOODS OR SERVICES WHICH MAY COST YOU ADDITIONAL MONEY."